

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the above amendments and following remarks.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-14 and 18 are currently pending. Claims 1, 2, 5-8, 11-14, and 18 are hereby amended. Claims 3, 4, 9, 10, 15-17 and 19-21 are canceled.

II. THE OBJECTIONS TO THE DRAWINGS UNDER 37 CFR 1.84(p)(4) and 37 CFR 1.84(p)(5)

The drawings were objected to under 37 CFR 1.84(p)(4) and 37 CFR 1.84(p)(5). The drawings have been amended to obviate the Examiner's rejections.

With respect to the Examiner's objection to the reference numeral "34" in Figure 2, Applicant respectfully submits that this reference numeral is in fact mentioned in paragraph [0064] of the published specification.

III. THE REJECTIONS UNDER 35 U.S.C. § 112

Claims 1-18 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1, 2, 5-8, 11-14, and 18 have been amended to obviate the Examiner's rejections.

IV. THE REJECTIONS UNDER 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a)

Claims 1-7, 9-12, 14, and 18 were rejected under 35 U.S.C. §102(b) as allegedly unpatentable over U.S. Patent No. 1,389,436 to Cameron ("Cameron") and further in view of U.S. Patent No. 5,769,635 to Eldreth ("Eldreth"). Claims 8 and 13 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Eldreth in view of U.S. Patent No. 5,626,128 to Bradley et al. ("Bradley").

As recited in independent claim 1, the instant invention is directed to *inter alia*:

"A medical tube retaining device, said device including...

a medical tube guide means for holding a medical tube located in the airway of the patient, the medical tube guide means being supportable on one or both of the patient engaging portions and located relative to the patient engaging portions such that **in use the medical tube guide means is operatively positioned at the mouth of the patient in order to hold the medical tube as it exits the airway of the patient.**" (Emphasis added).

The relied upon portions of Cameron, Eldreth, and Bradley, taken alone or in combination, do not teach or disclose the above identified feature of claim 1.

The present invention discloses a medical tube guide means such that when **in use the medical tube guide means is operatively positioned at the mouth of the patient in order to hold the medical tube as it exits the airway of the patient.** This limitation finds fair basis, for example, in paragraph [0060] of the published specification.

This limitation is contrary to the teaching of Cameron which at column 1, lines 61 to 66 states that "the spring coil will lie substantially flat or flush against the cheek of the patient".

It should be clear from the teaching of Cameron that this is not a medical tube retaining device at all and that the coil of the spring can in no way be said to constitute a

medical tube guide means suitable for guiding a medical tube, specifically an endotracheal tube, into the airway of a patient. A person skilled in the field of anesthesiology would not consider Cameron as a medical tube retaining device due to the fact that an endotracheal tube passing through the coil of the spring would be caused to kink against the cheek wall of a patient. This would consequently cause the contents of the endotracheal tube to be obstructed from freely flowing, consequently creating a very hazardous state of affairs.

By having tube guide means operatively positioned at the mouth of the patient in order to hold the medical tube as it exits the airway of the patient, this fatal flaw in proposing Cameron as a medical tube restraining device is addressed.

Claim 1 also discloses that the first and second patient engaging portions are **"shaped in the form of dental arches having tooth engaging portions"** contrary to Eldreth. Eldreth is concerned with a bite block having two bite pads disposed about two rest arms. Indeed, Eldreth is wholly silent on having patient engaging portions which are in the form of dental arches having tooth engaging formations. Figure 2 of Eldreth shows a circular structure which is clearly not in the shape of dental arches.

Applicant submits that the significance of such a feature of the present invention (having dental arches with tooth engaging portions) may be described by way of example. During tracheal intubation an anesthetist will make use of a laryngoscope. A laryngoscope is a medical device which comprises a handle and a blade having a light source. In order to locate an endotracheal tube in the trachea of a patient, the patient will be caused to lie on his back. The anesthetist will now insert the laryngoscope in the mouth of the patient and use the laryngoscope to push the patient's tongue out of the way.

The light source will now enable the anesthetist to see the patient's vocal cords thereby enabling the anesthetist to guide the endotracheal tube past the patient's vocal cords and into the trachea.

A drawback of using a laryngoscope is that it may at times cause trauma to the teeth when the blade of the laryngoscope is caused to lever or rest on the teeth of a patient.

By providing a set of dental arches having tooth engaging portions for holding the teeth of a patient, the teeth of a patient are protected against possible trauma resulting from the effects of a laryngoscope blade levering on them during the process of intubation.

Further, Bradley, taken alone or in combination, fails to cure the deficiencies of Cameron and Eldreth.

For at least the foregoing reasons, Applicant submits that independent claim 1 is patentable over the relied upon portions of Cameron, Eldreth, and Bradley. For reasons similar to those described above, claim 18 is also believed to be patentable.

V. DEPENDENT CLAIMS

The other claims are dependent from independent claim 1, discussed above, and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

CONCLUSION

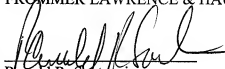
In view of the foregoing, it is believed that all of the claims in this application are patentable over the prior art, and an early and favorable consideration thereof is solicited.

Statements appearing above with respect to the disclosures in the cited references represent the present opinions of the Applicants' undersigned attorney and, in the event that the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective reference providing the basis for a contrary view.

Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,
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